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No. 91-932

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

EDNAR LOUISE JAMES,

Petitioner,

v.

SUBSEQUENT INJURY TRUST FUND AND CENTRAL STATE HOSPITAL,

Respondents.

Petition For Writ Of Certiorari To The Georgia Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether this Court should grant certiorari to determine if the Petitioner, who is receiving weekly workers' compensation benefits, has a "property right" in a lump sum payment of such benefits.

II. Whether this Court should grant certiorari to determine if the Supreme Court of Georgia properly held that the Petitioner was provided procedural due process by the Georgia State Board of Workers' Compensation.

LIST OF PARTIES

Ednar Louise James – Petitioner

Central State Hospital – Respondent

Georgia Department of Administrative Services – Respondent

Georgia Subsequent Injury Trust Fund – Respondent

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The Respondents in the above-styled action respectfully oppose the Petition for Writ of Certiorari to the Supreme Court of Georgia. The question presented by Petitioner for review does not meet any of the considerations outlined in Supreme Court Rule 10 governing review on certiorari. Accordingly, Respondents request that the Petition be denied.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Georgia is officially reported at 261 Ga. 548 (1991), and is unofficially reported at 406 S.E.2d 77 (Ga. 1991). In addition, the text of the opinion is included as Exhibit A in the Petitioner's Appendix to Petition for Writ of Certiorari.

JURISDICTION

Respondents concur in the Petitioner's Statement of jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Constitutional provision at issue in this case is the Fifth Amendment to the United States Constitution; the statutory provision at issue is O.C.G.A. § 34-9-222(a). The text of O.C.G.A. § 34-9-222(a) is included on pages 3-4 of the Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioner, Ednar Louise James, is presently receiving weekly workers' compensation benefits as a result of an injury she received during her employment with Respondent Central State Hospital. In January of 1990, and pursuant to O.C.G.A. § 34-9-222(a), Petitioner filed an application for a lump sum settlement of these benefits. Respondents, Central State Hospital and the Georgia

Department of Administrative Services, objected to this application for a lump sum award. Respondent Georgia Subsequent Injury Trust Fund became a party to this matter because the Co-Respondents have an accepted claim for reimbursement filed with Respondent Georgia Subsequent Injury Trust Fund, which would be affected in the event the application for a lump sum award was granted.

In February and April of 1990, Petitioner requested a hearing before the State Board of Workers' Compensation regarding her application for a lump sum award. On July 6, 1990, the State Board of Workers' Compensation denied Petitioner's application for a lump sum award based on Board Rule 222. Board Rule 222 provided Petitioner a "paper hearing" by allowing her to support her claim by submitting to the Board affidavits, depositions and sworn documentation. Petitioner then appealed to the Superior Court of Baldwin County, which reversed the Board's decision holding that due process entitled the Petitioner to a hearing on the issue of the lump sum award. Respondents appealed the Superior Court's reversal to the Georgia Court of Appeals. Because a constitutional issue was involved, the Georgia Court of Appeals transferred the case to the Georgia Supreme Court. The Georgia Supreme Court, in a decision dated July 3, 1991, held that the Petitioner was provided procedural due process. The Georgia Supreme Court denied Petitioner's Motion for Rehearing on September 9, 1991. Petitioner thereafter filed the instant Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

This petition arose as a result of Petitioner's contention that she is entitled to an oral hearing on her application for a lump sum award of workers' compensation benefits. Having failed to persuade the Supreme Court of Georgia that the procedures provided by the State Board of Workers' Compensation denied her due process, Petitioner now has filed this appeal. In setting forth its argument to this Court, Petitioner contends that the lack of an oral hearing denied her procedural due process. However, this Court has held that procedural due process does not always require an oral hearing. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Dixon v. Love*, 431 U.S. 105 (1977). Thus, the Georgia Supreme Court correctly relied on *Mathews v. Eldridge*, holding that due process does not always require an oral hearing, and that there were no constitutional infirmities in the procedures provided to the Petitioner. In addition, although the Georgia Supreme Court assumed without deciding that the Petitioner has a property interest in a lump sum award, Respondents submit that the Petitioner does not have such a property interest. Therefore, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. THIS COURT SHOULD NOT GRANT CERTIORARI BECAUSE THE PETITIONER DOES NOT HAVE A PROPERTY INTEREST IN A LUMP SUM AWARD, AND THEREFORE NO SPECIFIC PROCESS IS DUE.

The Petitioner filed an application for a lump sum payment of her workers' compensation benefits. Since

Petitioner has previously been determined to be entitled to workers' compensation benefits, she is currently receiving her weekly benefits. Thus, the Petitioner's entitlement to weekly benefits is not in dispute; rather, only her application for a discretionary lump sum payment is at issue. This application simply seeks more than what the Petitioner is entitled to under Georgia law. Consequently, the Petitioner is not being deprived of a constitutionally protected property right, and procedural due process is not required.

The threshold question in procedural due process cases is whether a "liberty or property interest" is at stake. *Board of Regents v. Roth*, 408 U.S. 564 (1972). If Petitioner does not have a property right or interest in a lump sum award, then there are no due process implications.

The existence of property interests are determined by reference to state law. *Roth*, 408 U.S. at 561. Official Code of Georgia Annotated § 34-9-222(a) allows an employee to file an application with the Board for a lump sum settlement or advance. The Board **"may"** order a lump sum payment. *Id.* The Georgia Court of Appeals, in interpreting this Code section, has held that there is no requirement that a hearing be held because the determination regarding lump sum awards is within the **discretion** of the Board. *Johnson v. Atlanta Dairies Coop.*, 172 Ga. App. 403, 404, 323 S.E.2d 185, 186 (1984). Consequently, contrary to the Petitioner's contention, Georgia law does not require that a hearing be provided since no property interest exists in lump sum awards. So long as the Board's decision is supported by competent evidence, the

Board has the legal **discretion** to determine the entitlement to lump sum awards. *International Energy Structures v. Fennelly,* 187 Ga. App. 416, 417, 370 S.E.2d 523, 524 (1988). Thus, if the Board is vested with **discretion** to grant or deny lump sum payments, then Petitioner cannot have a property right in a lump sum payment. Therefore, this case does not warrant further review by this Court since the Petitioner has no property right to a lump sum award.

II. THIS COURT SHOULD NOT GRANT CERTIORARI TO DETERMINE WHETHER THE PETITIONER WAS DENIED PROCEDURAL DUE PROCESS WHERE THE GEORGIA SUPREME COURT CORRECTLY HELD THAT A "PAPER HEARING" WAS SUFFICIENT.

Assuming arguendo that the Petitioner has a property right to a lump sum award, the Petitioner was provided due process because she was given a fair opportunity to present her arguments to the Board of Workers' Compensation pursuant to Rule 222 of the Rules and Regulations of the State Board of Workers' Compensation. This Rule allowed the Petitioner to file with the Board any depositions, affidavits or verified documentation she believed was necessary to support her claim. *See* Board Rule 222(b). The procedures provided by the Board pursuant to Board Rule 222 are sufficient to pass muster under the minimum constitutional standards which due process requires in the administrative setting. *Dixon v. Love,* 431 U.S. 105 (1977). Furthermore, "due process is flexible and calls for [only] such procedural protections as a particular situation demands." *Morrissey v. Brewer,*

408 U.S. 471, 481 (1972); *Mathews v. Eldridge*, 424 U.S. 319, 333-34 (1976).

The procedures set out in Board Rule 222 satisfy the minimum due process requirements under the *Mathews v. Eldridge* balancing test. This balancing test considers three factors: (1) the private interest that will be affected; (2) the risk of an erroneous deprivation and the value of additional safeguards; and (3) the governmental interest at stake, including the physical and administrative burden. *Mathews*, 424 U.S. at 335.

In the case *sub judice*, the private interest at stake is not the determination of benefits needed for daily sustenance, but rather Petitioner's interest in a lump sum award of approximately $93,044.24, instead of her normal weekly payments. Thus, the private interest is not as grave as in the *Mathews'* case where benefits were terminated. In addition, the risk of an erroneous deprivation occurring is minimal since the Board examines affidavits and verified documents submitted by the parties. *See* Board Rule 222(b)(1, 5) *and International Energy Structures v. Fennelly*, 187 Ga. App. at 417, 370 S.E.2d at 524. Also, an oral hearing would have little value since both parties can respond and cross examine adverse parties by deposition. *See* Board Rule 222(b)(6). Finally, if the Board was required to provide a hearing on every application for a lump sum payment, the administrative and fiscal burden on the Board would be tremendous due to the large number of applications that are filed. Thus, the Board has a substantial interest in not providing oral hearings on all applications for lump sum payments.

Based on the above, the Georgia Supreme Court properly applied the *Mathews'* balancing test in determining that Petitioner was provided sufficient procedural due process. Accordingly, this Petition should be denied.

CONCLUSION

The issues presented by this case involve constitutional questions that have been well settled by this Court. Accordingly, and based on the arguments presented herein, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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